

Patent Application  
DOCKET NO. PDNO. 10010430-1  
47429-00038USPT

### REMARKS

Reconsideration and allowance are respectfully requested in view of the foregoing amendments and the following remarks.

Claims 12-20 are pending in this application.

#### Regarding the § 103 Rejection

Claims 12-20 were rejected under 35 U.S.C. § 103(a) for being rendered obvious by Tayebati in view of Kudo and Baillargeon. Applicant respectfully traverses this rejection.

As stated in the previous amendment, § 706.02(j) of the MPEP recites that there are three necessary elements to establish a *prima facie* case of obviousness as adopted from *In Re Vaeck*. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In Re Vaeck*, 947 F2nd 488. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestions to make the claimed combination and their reasonable expectation of success must both be found in the prior art and not based on Applicant's disclosure. *Id.*

Applicant respectfully submits that a *prima facie* case of obviousness has not been established in the present office action. Applicant agrees with the Examiner that Tayebati fails to teach a support layer formed over the walls of the second layers. Moreover in Tayebati, there is no discussion of a need to support the edges. In Tayebati the collapse problem, which is solved by embodiments of the present invention, is not discussed. Tayebati teaches unsupported edges and uses a cantilever technique to allow the layers to

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move with respect to each other. (See Col. 2, Lines 30-40 and Col. 6, Lines 19-58) As such, there is no suggestion or motivation in Tayebati to require or suggest a need for "a support layer formed over a portion of the sidewalls to support the second layers against collapse into one or more gaps." Applicant respectfully submits that Baillargeon teaches that there are no gaps between the layers. Baillargeon, at col. 5, lines 47-48 does not teach the removal of cladding, but rather teaches that "the cladding regions may be omitted" (see col. 5, lines 46-49). Baillargeon indicates that if the cladding regions 12 or 16 are omitted, the remaining incorporated layers would be in contact with each other rather than separated by a gap. Applicant respectfully submits that the Examiner is using hindsight in an attempt to make Baillargeon aid in obviating the claims.

There is no reasonable expectation of success with the combination of Tayebati, Kudo and Baillargeon. There is no suggestion to use the Baillargeon insulating layer 18 in combination with the movable Tayebati layers having air gaps therebetween. There is also no indication that putting a Baillargeon style insulating layer 18 on Tayebati will allow the Tayebati layers to continue to move to function properly. As such, the functionality of Tayebati is destroyed. There is no suggestion to combine the insulation layers of Baillargeon in conjunction with Tayebati. Kudo, by the way, does not help in this matter at all. Finally, the cited art references do not teach or suggest all the claim limitations. That is, the teaching or suggestion to make the claimed combination and their reasonable expectation of success must be found in the prior art and not based on the Applicant's disclosure. Here, Applicant submits the Examiner is using hindsight to combine Baillargeon to Tayebati rather than using the language within Tayebati and Baillargeon to find any reasonable expectation of success from combining a Baillargeon device (having no air gaps between layers) electrically insulating layer 18 (col. 5, line 15, Figure 1) with Tayebati's cantilevered layers with gaps

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therebetween. Tayebati provides no discussion of a need to support the edges of the cantilevered layers. Baillargeon's insulating layer 18 is not considered a support layer in Baillargeon. In effect, the Examiner has combined Baillargeon, which does not have any air gaps between layers and therefore does not require support, but does have an insulating layer 18 on the edges of the various layers with Tayebati's cantilevered layers that do have air gaps between them and must be able to move with respect to each other in order to function as required by Tayebati. Again, Tayebati does not discuss the problem of layer collapse and does not indicate a need for additional support other than the cantilevers prescribed in Tayebati. Kudo does not add anything to resolve the inadequacies of Baillargeon and Tayebati. As such, there is no teaching or suggestion in the cited art to obviate the claimed combination and there is no reasonable expectation of success found in the cited art. As such, Applicant respectfully submits that the § 103 rejection should be withdrawn due to a lack of a *prima facie* case of obviousness. Applicant respectfully invites the Examiner to review Applicant's prior amendment along with this amendment carefully. Applicant believes the Examiner will understand that the present claims do not require amending because they are allowable over all art of record. Applicant requests that the § 103 rejection be withdrawn and submits that claims 12-20 are ready for allowance.

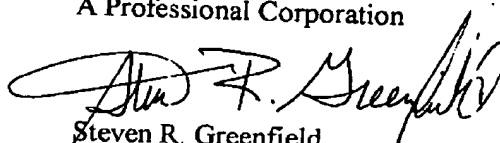
It is believed that the claims, as now constituted, patentably define Applicant's invention over all art of record. Furthermore, it is respectfully submitted that entry of this amendment is warranted even if it does not place these claims in condition for allowance because it clearly clarifies the nature of the confusion that is evidenced in pages 2 and 3 of the present Office Action. Accordingly, it is believed that entry of this Amendment is warranted under the provisions of 37 C.F.R. § 1.116 as it would clearly reduce those issues which might be present upon the filing of an appeal. Applicant respectfully submits that

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entry of this Amendment is more importantly warranted in that it clearly distinguishes over all art of record. This application should be reconsidered and all claims be indicated as allowed. Applicant therefore respectfully requests entry of this Amendment, the reconsideration of this application and an early Notice of Allowance. Should the Examiner have any further questions or comments facilitating allowance, the Examiner is invited to contact Applicant's representative indicated below to further prosecution of this application to allowance and issuance.

Respectfully submitted,

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